

UNITED STATES DISTRICT COURT
for the DISTRICT OF MASSACHUSETTS

DIGITAL SIN, INC.

Plaintiff,

-against-

1:12-CV-10945-GAO

JOHN DOES 1-45

Defendants.

MOTION TO DISMISS – RULES 12 AND 4

1. My name is Brent J. Nelson and I live at 32 Orange Street in Waltham, Massachusetts.

2. I received a copy of the Summons and Complaint in this lawsuit on November 29, 2012.

It is my understanding that I have 21 days from that date to either file an Answer or move to dismiss. Based on the circumstances, I am choosing to make the motion to dismiss.

3. I have never downloaded anything illegally in my entire life. In fact, I couldn't even if I wanted to because I do not own a computer.

4. I do have a wireless router in my home, which was installed by Verizon about six or seven years ago.

5. The only reason I had the router installed was so that I could play games online through my PlayStation. Again, I do not now nor have I ever owned an actual computer. My PlayStation is just a gaming console and the router gives me the ability to connect and play with others.

6. When Verizon installed the router, they initially password protected it (which is standard business practice for them from what I understand).

7. However, I noticed right away that for some reason, when the password protection was activated, my PlayStation did not work right. Other friends I know had similar experiences.

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8. I have lots of friends who work with computers for a living, so I asked a few of them if it was possible to turn the protection off. I was told that it was possible, and I learned how to do it.

9. So for the past six or seven years, I have removed the password protection feature from my internet from time to time, at times leaving it down for days or even weeks.

10. I am informed and I believe that there is nothing illegal about doing this, since there is no law requiring me to maintain password protection on my wireless router and internet connection. Plenty of people don't even bother to use password protection at all.

11. The Plaintiff in this case claims that some unidentified person (who they wrongfully presume was me) illegally downloaded a pornographic movie through my router, using an IP address that was assigned to me by Verizon at the time of the download.

12. I did not download this movie, nor do I even have the capability to do so.

13. Nobody in my household could have done this either. Again, we do not own a computer. I live alone most of the week, and I have my sons a few nights a week (they are ages four and six so clearly not responsible for this).

14. Literally anyone could have pulled up on my street, near my house, with a laptop computer while my password protection was off and did this. Plaintiff must understand that it is completely impossible to prove that I could have done it without a computer.

15. I called Plaintiff's attorney to explain that while he might very well have pinpointed me as the unlucky subscriber (and I'm not even sure how he got that information legally), I could not be the infringer he is looking for because I don't own a computer.

16. First, he told me to just send him \$3,500.00 in exchange for dropping the lawsuit.

17. I absolutely refused. I honestly felt that this was all a scam and that I was being blackmailed or set up somehow.

18. Mr. Cable basically acknowledged that I wouldn't be able to do the things he has accused me of without a computer, but he refused to drop the lawsuit without me providing some proof.

19. It is Plaintiff's burden to prove I did it. Obviously I can't prove a negative, and as I said before I don't see how he could ever prove that I could have done this without a computer.

20. An unprotected internet connection can be accessed by anyone in close enough proximity to it, and some computers in my neighborhood may routinely connect to my internet when it is unprotected. I have no way of knowing if, when, how often or what these people are doing.

21. And even if I left my internet connection password protected at all times, my Verizon router is old and could easily be compromised without my knowledge or consent. Anyone who knows how to use Google can find instructions for cracking these older models.

22. For all of these reasons, the Plaintiff has failed to state any cause of action against me and has failed to sue the actual infringer. I should not have to spend time and money defending this lawsuit when Plaintiff can never ever prove its case against me.

23. I therefore ask that the court dismiss the Complaint against me under Rule 12.

24. Also, my understanding is that Rule 4 requires a plaintiff to serve a Summons and Complaint within 120 days of filing.

25. According to the Summons that was served on me, this action was filed on May 29, 2012.

26. I was not served until November 29, 2012, exactly six months later.

27. Plaintiff served me two months later than Rule 4 allows, and the Complaint should also be dismissed for this reason.

28. I respectfully request an order dismissing the Complaint against me under Rule 12 and/or under Rule 4.

Date: December 18, 2012


BRENT J. NELSON